

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

THE ESTATE OF JAMES GODWIN,	:	C.A. No. S09C-07-045 THG
LaVerne Brockington, Executrix,	:	
Plaintiff,	:	
v.	:	
DENNIS L. SMITH,	:	
Defendant.	:	

ORDER

Background

On July 28, 2009, Plaintiff, then represented by counsel, filed a Complaint seeking ejectment of Defendant and certain of Defendant's personal property from Plaintiff's real property in Sussex County, Delaware known as tax parcel no.: 4-33-6.15-3.00 (the "Property") and claiming damages for timber trespass.¹ On January 13, 2010, Defendant, who was self-represented, filed a Motion to Dismiss.² On May 28, 2010, Plaintiff filed a Motion for Partial Summary Judgment (Ejectment) on the basis that Defendant had not provided an adequate defense to ejectment under 10 *Del. C.* §6701(b). Both motions were removed from this Court's calendar and

¹ The timber trespass claim was subsequently voluntarily withdrawn by Plaintiff.

² The Motion to Dismiss was based upon Super. Ct. Civ. R. 9(b) and Super. Ct. Civ. R. 41(e) and (f), all of which are inapposite.

rescheduled because of certain motions filed by Defendant in the United States District Court seeking “reassignment” to federal court. On June 29, 2010 the District Court denied these motions and summarily remanded the case to this Court.³

On May 6, 2011, this Court granted Plaintiff’s Motion for Partial Summary Judgment (Ejectment)⁴ and denied Defendant’s Motion to Dismiss, and entered an Order that Defendant be immediately ejected from the Property. This Order stated that the case was closed, and the Order could be recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware. On May 11, 2011, Plaintiff requested this Court to issue a Writ of Possession upon the Property. The Writ of Possession was issued as requested and was served upon Defendant on June 2, 2011. The Property was posted by Deputy Craig Dickerson with a ten-day notice on June 2, 2011, and replevin was completed on June 22, 2011.

On October 30, 2020, Plaintiff, now self-represented, filed a “Motion to Enforce Ejection from the Plaintiff’s Property” [sic], and Defendant, still self-represented, filed a Motion to Dismiss⁵ on November 17, 2020. I scheduled a

³ In his May 12, 2020 (presumably Defendant meant to say 2021) letter to multiple addressees, a copy of which I received on May 19, 2021, Defendant complains about several subsequent petitions for removal to the United States District Court being denied. I note that the District Court has placed Defendant on notice that any future filings would be docketed but not considered by that court, and that the federal case is closed. Thus, there is no basis for Defendant’s complaint.

⁴ The Court applied the standard of review for a Motion for Summary Judgment under Super. Ct. Civ. R. 56; i.e., that there was no genuine issue of material fact.

⁵ Although he does not articulate it, Defendant appears to argue that the underlying decisions of this Court, including the May 6, 2011 Order, are void and unenforceable, and therefore I lack subject matter jurisdiction under Super. Ct. Civ. R. 12(b).

hearing on these motions for May 20, 2021. On May 19, 2021 I received a copy of a letter from Defendant to multiple addressees dated May 12, 2020 (presumably Defendant meant to say 2021) stating that, *inter alia*, he would not participate in that hearing.

Applicable Law

In *Estate of Morrow v. Bohn*, 2014 WL 2535480 (Del. Super. June 2, 2014), the personal representatives of an estate moved for summary judgment pursuant to Superior Court Civil Rule 56. Plaintiffs filed a Petition for Ejectment, seeking an order removing third parties from the subject property and requiring them to pay for damages related to their illegal occupation of the property. A previous hearing before the Justice of the Peace Court had previously determined that defendants' occupation of the property was, in fact, illegal. Defendants did not deny any of the relevant factual claims made by plaintiffs in their complaint as required by 10 *Del. C.* § 6701(b) for a valid defense to the action. Defendants simply requested that plaintiffs honor the decedent's alleged "last wishes" that defendants be allowed to reside on the property. Even if true, stated the Court, that basis did not provide defendants with a legal justification to continue residing on the property.

Similarly, in the instant case, Defendant has claimed throughout these proceedings that there was an agreement of sale for the Property with the decedent but can present no evidence thereof that is sustainable under the Statute of Frauds. As in *Estate of Morrow v. Bohn*, in the instant case this Court found no genuine

issue of material fact and has already granted summary judgment on the issue of ejectment to Plaintiff. In any event, nothing in the record provides Defendant with a legal justification to continue maintaining certain of his personal property on the Property. Hence, Defendant does not satisfy the requirements for a valid defense to Plaintiffs' "Motion to Enforce Ejection" [sic].

Conclusion

For the foregoing reasons, this 21st day of May 2021, Plaintiff's Motion is **GRANTED** and Defendant's Motion to Dismiss is **DENIED**. Defendant and any of his personal property are **ORDERED** to be removed from the Property. Finally, Defendant is **ORDERED** to pay Plaintiff for any of her costs and expenses incident to removing any personal property of Defendant from the Property, as reasonably incurred and documented by Plaintiff.

/s/ Craig A. Karsnitz

cc: Prothonotary
LaVerne Brockington, as Executrix
Dennis L. Smith